

REPORT TO COUNCIL



Date: November 18, 2024
To: Council
From: City Manager
Address: 1629 KLO Road
File No.: A24-0012
Zone: A1 - Agriculture

1.0 Recommendation

THAT Agricultural Land Reserve Application No. A24-0012 for Block 57 District Lot 131 ODYD Plan 186 Except Parcels C and D Plan B1813 and Plan KAP78678, located at 1629 KLO Road, Kelowna, BC for a Soil and Fill Use in the Agricultural Land Reserve pursuant to Section 20.3 of the *Agricultural Land Commission Act*, be supported by Council.

AND THAT Council directs staff to forward the subject application to the Agricultural Land Commission for consideration.

2.0 Purpose

To support an application to the Agricultural Land Commission to allow a Soil and Fill Use application for placement of 745 cubic meters of gravel fill for a retail nursery parking lot and a nursery container production area.

3.0 Development Planning

The applicant is seeking a retroactive Agricultural Land Commission (ALC) approval via a Soil and Fill Use application for placement of 745 cubic meters of gravel fill (30 cm depth) to accommodate for retail nursery parking, nursery greenhouse container planting, and pedestrian traffic. The gravel fill will allow for a clean, functional, and free draining area for customers and staff using the site.

The subject property is 5.1 ha (12.8 acres) in size and is located on KLO Rd. The current nursery garden centre is 1.4 ha in area, which includes greenhouses and outdoor irrigated growing beds. The area includes a gravel parking lot and retail sales building as part of their operation. The farming operation includes three properties (3350 Benvoulin Rd, 3400 Benvoulin Rd and 1629-1649 KLO Rd), which consists of 7.1 ha of land. The active agriculture consists of 3.9 ha of alfalfa production and 2.0 ha of field grown cut flowers.

The ALC has determined that Soil and Fill Use applications that are not expressly allowed under the Agricultural Land Reserve Regulation may not proceed to the ALC for permit review unless authorized by a resolution of the local government. There are several common reasons why the ALC will not accept fill applications without first obtaining consent from local government, which are as follows:

- Applicants were initially caught placing fill without permits from the ALC.
- The fill may not aid the farm/farming activity.
- Work is planned to extend beyond two years.

- A waterway may be fouled, obstructed, or impeded.
- The agricultural capability of the land may be degraded.
- Fill placement has not been demonstrated as the only means available to address implementation of standard agricultural best practices.

In this instance, the ALC will not accept this proposal directly, since the applicant placed fill without having ALC approvals in place. Subsequently, the applicant has hired a professional agrologist to prepare a plan to seek Council’s authorization to forward this Soil and Fill Use application to the ALC for their consideration.

As part of the application review process the subject application was assessed by the Agricultural Advisory Committee at the meeting held on October 10, 2024. The Committee recommends that Council support the subject application to be forwarded to the ALC for their consideration. Additionally, the Ministry of Agriculture and Food provided comments in support of the application as well. As a result, staff supports this Soil and Fill Use proposal to be sent to the ALC for their review and further direction on the matter.

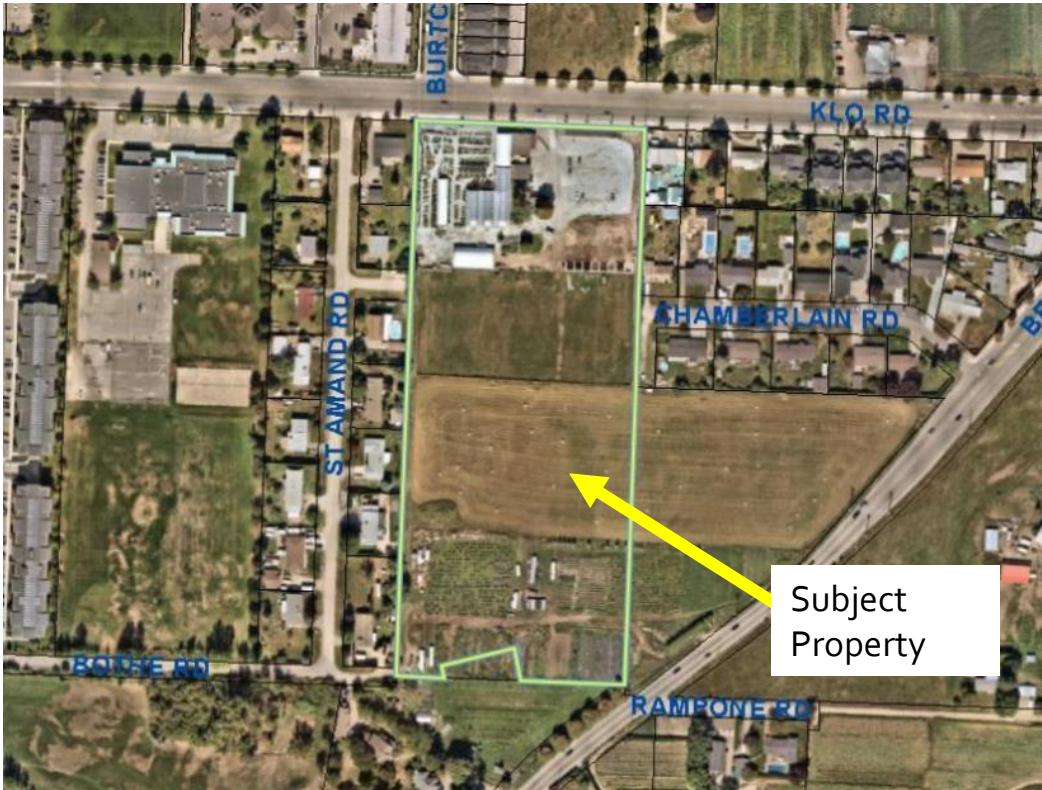
4.0 Subject Property & Background

4.1 Site Context

The subject property is located in the South Pandosy – KLO City Sector near the intersection of Burtch Road and KLO Road. The parcel is within the Agricultural Land Reserve with a Future Land Use designation of Rural – Agricultural and Resource (R - AGR) and is zoned A1 – Agriculture. The surrounding area is a mix of agricultural, commercial, and residential land uses.

Orientation	Zoning	ALR	Land Use
North	A1 – Agriculture	Yes	Agriculture
	MF1 – Infill Housing	No	Residential
South	A1 – Agriculture	Yes	Agriculture
East	RU1 – Large Lot Housing	No	Residential
	RR2 – Small Lot Rural Residential	No	Residential
	A1 – Agriculture	Yes	Agriculture
West	MF1 – Infill Housing	No	Residential

Subject Property Map



Unauthorized Fill Area Map



4.2 Background

The subject property has been owned by Bylands Nursery, since August 2023. Prior to Bylands, the property was used as a garden centre for over 10 years under the business name of Better Earth and Garden and Tropicals.

Between October 2023 and March 2024, Bylands imported gravel to the site to enhance the container nursery production area and provide parking for the retail nursery business. This type of fill required authorization by the ALC, which did not occur, and resulted in an investigation by ALC Enforcement Officers. On May 5, 2024, ALC Enforcement issued an order to Bylands to apply for a Soil and Fill Use application or remove the unauthorized fill.

Currently, the majority of the parcel (3.7 ha) is used for soil-based agriculture (alfalfa and cut flowers). The northern portion of the site (1.4 ha) has historically been used for nursery and greenhouse production, retail sales and bulk sales of soil and other products. The site is able to support a wide range of crops based on the Class 2 and 3 agricultural land capability ratings as per the attached agrology report.

The subject property had a previous non-farm use application (A15-0006) that was forwarded to the ALC in 2015. The purpose of the original application was to bring the previous garden nursery business, Better Earth Garden Centre, into compliance with the City’s bylaws and ALC regulations. The non-compliance uses of the land included retail sales of non-farm products and the landscaping portion of the property. In February 2016, the ALC issued a resolution to allow the non-farm use application for three-years and was nontransferable. A Temporary Use Permit Application (TUP16-0001) was approved by Council in July 2016 and was issued for a three-year period. This permit lapsed in 2019, with no opportunity to extend. The sale of landscaping products has continued and remained following this date. Bylands is currently working towards ALC and Zoning Bylaw conformance for their retail operation on the parcel.

Current Development Policies

4.3 Kelowna Official Community Plan (OCP)

Objective 8.1. Protect and preserve agricultural land and its capability	
Policy 8.1.1. Protect Agricultural Land.	<p>Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.</p> <p><i>The applicant proposes to operate the retail business in compliance with ALC Regulations and the City of Kelowna Zoning Bylaw. The majority of the property is being used for growing alfalfa and field grown flowers.</i></p>
Policy 8.1.6. Non-farm Uses.	<p>Restrict non-farm uses that do not directly benefit agriculture except where such non-farm uses are otherwise consistent with the goals, objects, and other policies of this OCP. Support non-farm use applications only where approved by the ALC and where the proposed uses:</p> <ul style="list-style-type: none"> i. Are consistent with the Zoning Bylaw and the 2040 OCP; ii. Provide significant benefits to local agriculture; iii. Do not require the extension of municipal services; iv. Will not utilize productive agricultural lands; v. Will not preclude future use of lands for agriculture; and

	vi. Will not harm adjacent farm operations.
	<i>The applicant is currently working towards ALC and Zoning Bylaw conformance for their retail operation on the parcel.</i>

5.0 Application Chronology

Application Accepted: September 12, 2024
 Agricultural Advisory Committee Meeting: October 10, 2024

The subject application was reviewed by the Agricultural Advisory Committee at the meeting held on October 10, 2024 and the following recommendation was passed:

THAT the Committee recommends that Council supports an application (A24-0012) to the Agricultural Land Commission for a Soil and Fill Use application.

Report prepared by: Corey Davis, Development Engineering Technologist
Reviewed by: Dean Strachan, Development Planning Manager - South
Reviewed by: Nola Kilmartin, Development Planning Department Manager
Approved for Inclusion: Ryan Smith, Divisional Director, Planning, Climate Action & Development Services

Attachments:

- Attachment A: ALC Application File No. 101865
- Attachment B: Site Plan
- Attachment C: Agrologist Report
- Attachment D: Referral Letter from Ministry of Agriculture and Food